



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 10, 1993

Mr. R. Scott Alagood
Hayes, Coffey & Berry
101 South Locust, Suite 601
Denton, Texas 76201

OR93-510

Dear Mr. Alagood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19986.

The Denton Independent School District (the "school district") received a request for "[a]ll documents, resumes, and other information constituting the complete application file assembled by the District, or its acting agent, for each publicly announced superintendent finalist under current consideration by the Board of Trustees." The school district has submitted for our review the following categories of information concerning the applicants:

Exhibit B: Cover letters;

Exhibit C: Resumes;

Exhibit D: Personal statements about philosophy of education and administration;

Exhibit E: Professional accomplishments;

Exhibit F: College transcripts;

Exhibit G: Teaching certificates;

Exhibit H: References;

Exhibit I: Personal statements about qualifications and duties of a superintendent and achievement awards;

Exhibit J: Magazine articles about candidate's current and former school districts; and

Exhibit K: Job placement data sheets.

You contend the information in Exhibit F may only be released in a redacted form and that Exhibits B, D, H, and I are excepted from public disclosure under sections 3(a)(1) and 3(a)(2) of the Open Records Act.¹

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." In order for information to be protected from public disclosure under the common-law right of privacy as incorporated by section 3(a)(1), the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4.

You claim that Exhibits B (cover letters), D (personal statements of education philosophy), and I (personal statements about qualifications and duties of a superintendent) are "of an intimate nature, which, if publicized, would be highly objectionable to a reasonable person." The information contained in Exhibits B, D and I is not of a highly intimate or embarrassing nature concerning the applicants' private

¹You state the school district has no objection to the public disclosure of Exhibits C, E, G, J, and K. Accordingly, we will limit our ruling to the information contained in Exhibits B, D, F, H, and I.

affairs.² See Open Records Decision No. 470 (1987) (job performance of a public employee does not generally constitute the employee's private affairs); see also Open Records Decision No. 467 (1987) (public has a legitimate interest in the job qualifications of public employees). There is also a legitimate public interest in the applicants' backgrounds and the applicants' personal philosophies of education and views of the qualifications and duties of a public school superintendent. Open Records Decision No. 542 (1990) (information about the qualifications of a public employee is of legitimate concern to the public). Accordingly, you may not withhold Exhibits B, D, and I under section 3(a)(1) of the Open Records Act.

Exhibit H contains references and reference letters. You claim that because the information relates to the person giving the reference and not the job applicants, "[t]he names, addresses and phone numbers, as well as the particular thoughts of each individual" are excepted from disclosure. The names, occupations, addresses, and phone numbers of character references are not protected by common-law privacy as intimate or embarrassing information. Open Records Decision No. 455 (1987) at 9. Furthermore, the reference letters concern the applicants' qualifications and their suitability for the superintendent position and, therefore, are of legitimate concern to the public. *Id.* Accordingly, you may not withhold Exhibit H under section 3(a)(1) of the Open Records Act.

You state that the school district has no objection to releasing Exhibit F, the applicants' college transcripts, in a redacted form. Section 3(a)(2) excepts

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and *transcripts of professional public school employees; provided, however, that nothing in this section shall be construed to exempt from disclosure the degree obtained and the curriculum on such transcripts of professional public school employees, and further*

²You cite *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) as authority for withholding the requested information. The *Hubert* case involved a request for the names of candidates for the office of president of a university. The *Hubert* court ruled that the information was *not* of an intimate or embarrassing nature and, furthermore, that the information was of legitimate public interest. 652 S.W.2d at 551. In *Hubert*, the court distinguished the information at issue there from the information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation of the South*, i.e., information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* (discussing *Industrial Foundation of the South*, 540 S.W.2d at 683). As in the *Hubert* case, the information at issue here is clearly distinguishable from the "intimate and embarrassing" information at issue in *Industrial Foundation of the South*.

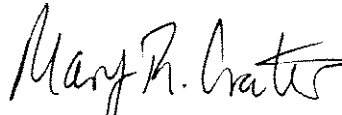
provided that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

Section 3(a)(2) requires that governmental bodies redact from the college transcripts of a professional public school employee everything except the employee's name, the degree obtained, and the courses taken. Open Records Decision No. 526 (1989). Accordingly, under section 3(a)(2), you must redact the transcripts accordingly before disclosing the information in Exhibit F.

Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 3(a)(1). *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under section 3(a)(2) was the same as that delineated in *Industrial Foundation of the South* for section 3(a)(1)). Because we have already determined the Exhibits B, D, H, and I may not be withheld from disclosure under section 3(a)(1), you may not withhold them under section 3(a)(2) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/LBC/jmn

Ref.: ID# 19986
ID# 20211

Enclosures: Submitted documents

cc: Mr. David C. Zoltner
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(w/o enclosures)